IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

WEALTH TAX REFERENCE No 6 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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COMMISSIONER OF WEALTH TAX

Versus

LALITCHANDRA M PATEL

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Appearance:

1. WEALTH TAX REFERENCE No. 6 of 1988

MR TANVISH BHATT for Petitioner No. 1

NOTICE SERVED for Respondent No. 1

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CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE K.A.PUJ

Date of decision: 20/06/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference at the instance of the revenue, the following questions are referred for our opinion in respect of assessment years 1970-71 to 1973-74:-

(i) "Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in setting aside the order of the Commissioner of Wealth-tax u/s.25(2) of the W.T. Act, 1957?"

(ii) "Whether, the finding of the Appellate Tribunal that the Commissioner of Wealth-tax had exceeded his jurisdiction and his order cannot be sustained is correct in law ?"

2. The respondent - assessee was a partner in the firm called L.M. Patel & Co. having 40% share. While assessing the interest of the assessee as partner in the said firm, the question of value of property of the firm consisting of 5 storeyed commercial cum office building on land admeasuring 11043 sq.ft. came up for consideration. The Wealth-tax Officer adopted the value of the said property as determined by the assessee's valuer. Subsequently on a reference made to the departmental valuer, the property was valued at Rs.12,44,000/- for the years under consideration.

The Commissioner of Wealth-tax (CWT) after examining the wealth-tax record of the assessee for the years under consideration found that the assessment framed by the Wealth-tax Officer were prejudicial to the interest of the revenue, as the value determined by the District Valuation Officer (i.e. departmental valuer) was higher than the value assessed by the assessee's valuer. Hence, there was a gross understatement. The Commissioner under section 25(2) of the Wealth-tax Act, 1997 (hereinafter referred to as "the Act") set aside the assessments made by the Wealth-tax Officer directing him to recompute the correct net wealth and tax accordingly. The assessee succeeded in appeal before the Income-tax Appellate Tribunal. Hence, this reference at the instance of the revenue.

3. We have heard Mr Tanvish Bhatt, learned Standing Counsel for the revenue. Though served, none appears for the respondent - assessee.

4. The learned counsel points out that the Tribunal's decision holding that the Commissioner erred in law in referring to material which was not on record before the Wealth-tax Officer is passed on the decision of the Calcutta High Court in Ganga Properties Pvt. Ltd.

(118 ITR 447). Mr Bhatt, however, submits that the said view is now overruled by the Hon'ble Supreme Court in CIT vs. Shree Manjunathesware Packing Products and Camphor Works (1998) 231 ITR 53 wherein the Apex Court interpreted a parimateria provision of Section 263 of the Income-tax Act, 1961. The learned counsel further relied on the decision of the Madras High court in CWT vs. S.V. Sivarathina Pandian (2000) 241 ITR 146 wherein the Madras High Court interpreted the provisions of Section 25(2) of the Wealth-tax Act, 1957 itself.

5. Having heard the learned counsel for the revenue and having perused the aforesaid decisions, we find considerable substance in the submissions made by Mr Tanvish Bhatt, learned counsel for the revenue. In CIT vs. Shree Manjunathesware Packing Products and Camphor Works (supra) the Supreme court interpreted a parimateria provision of Section 263 of the Income-tax Act and held that while calling for and examining the record of any proceeding under Section 263(1), it is and it was open to the Commissioner not only to consider the record of that proceeding but also the record relating to that proceeding available to him at the time of examination. The Supreme Court even held that the decision of this Court i.e. the Gujarat High Court in CWT vs. Rajashree S. Parekh taking the contrary view and against which the department's SLPs were dismissed, did not lay down correct law and that the dismissal of the Special Leave Petitions summarily did not mean that the Supreme Court approved the view that was taken by the Gujarat High Court in the case of Rajeshree S. Parekh. The Court explained the legislative history of Section 263 with particular reference to the controversy about the scope of the expression "record" and observed that if on further examining the record and after making or causing to be made an inquiry, the Commissioner considers the order to be erroneous and prejudicial to the interest of the revenue, he can pass the order thereon as circumstances of the case justify and the Apex Court in terms observed that obviously, as a result of the enquiry, the Commissioner may come into possession of new material and he would be entitled to take the new material into account. If the material, which was not available to the Income-tax Officer when he made the assessment could thus be taken into consideration by the Commissioner after holding an enquiry, there is no reason why the material which had already come on record though subsequently to the making of the assessment cannot be taken into consideration by him. Hence, the Apex Court concluded that it was open to the Commissioner not only to consider the record of that proceeding but also the

record relating to that proceeding available to him at the time of examination.

6. The Madras High Court followed the aforesaid decision in CWT vs. S.V. Sivarathina Pandian (supra) which was concerned with a case similar to the case before us. Following the aforesaid decision, the Madras High Court held that the Commissioner of Wealth-tax was perfectly justified in setting aside the order of assessment and directing the Wealth-tax Officer to redo the assessment, taking into consideration the record relating to the proceedings available at the time of examination by the Commissioner and that the record was not confined to the material available to the Wealth-tax Officer.

7. Following the aforesaid decision of the Apex Court and agreeing with the aforesaid view of the Madras High Court, we are of the same view that the Commissioner of Wealth-tax was justified in setting aside the assessment made by the Wealth-tax Officer and in directing the Wealth-tax Officer to recompute the correct net wealth and tax after considering the valuation made by the Departmental Valuer.

8. In view of the above, our answer to both the questions referred to us is in the negative i.e. in favour of the revenue and against the assessee.

9. The Reference accordingly stands disposed of.

(M.S. Shah,J)

(K.A. Puj,J)

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